

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 02 LIMA 004033

SIPDIS

SENSITIVE

DEPT FOR WHA/AND, WHA/EPSC, EB/IFD/OFD, EB/CBA, EB/IFD/OIA  
TREASURY FOR OASIA/INL, DO/GCHRISTOPOLUS  
COMMERCE FOR 4331/MAC/WH/MCAMERON  
USTR FOR BHARMAN/DWEINER

E.O. 12958: N/A

TAGS: [EINV](#) [ECON](#) [ETRD](#) [PGOV](#) [PE](#)

SUBJECT: ANOTHER ATPDEA DISPUTE NEAR RESOLUTION

REF: A) LIMA 2017 B) LIMA 995

11. (SBU) Summary. According to GOP's Commercial Dispute Coordinator, Aurelio Loret de Mola, the Luz del Sur/PSEG dispute should be resolved shortly, pending SUNAT valuation of any back taxes owed by the company. The remaining ATPDEA cases -- Engelhard, Princeton Dover, and LeTourneau -- are still unresolved. The Superior Court issued its ruling, 3-2 against both Engelhard and Princeton Dover in August; both companies have appealed to the Constitutional Court. On LeTourneau case, Loret de Mola appears close to providing the company with the GOP's final monetary offer of approximately \$10 million. LeTourneau continues to insist that a third-party assessment be used to determine the market value of the expropriation and will likely not accept the GOP's offer. End Summary.

Luz del Sur: Light at the End of the Tunnel  
-----

12. (SBU) According to the GOP's Commercial Dispute Coordinator Aurelio Loret de Mola and company representatives, the Luz del Sur dispute is on the verge of being fully resolved. The Tax Court issued a ruling on July 26 that accepted the CONATA revaluation of the U.S. company's assets (Ref A). The Tax Court instructed SUNAT to use that valuation to determine any back taxes that Luz del Sur owes. Loret de Mola informed us that the amount should be minimal, probably less than \$150,000. He also noted that SUNAT would not appeal the Tax Court ruling; SUNAT also told the local Luz del Sur general manager that it would not appeal. The final step is for SUNAT to issue its resolution, which we are told should be ready shortly.

Cases in Appeal  
-----

13. (SBU) Engelhard: In mid-August, the Superior Court issued its final ruling, 3-2 against the company, denying there were violations of due process. The company was notified in late August of the decision, and it filed its last appeal to the Constitutional Court on September 14. Engelhard, in its final appeal, continues to claim that its rights and due process had been violated. The Constitutional Court will take at least two months to rule, if the case is expedited.

14. (SBU) Princeton Dover: In early August, the Superior Court issued its final ruling, 3-2 against Princeton Dover. Princeton Dover filed its appeal with the Constitutional Court on August 8. The company seeks to overturn the ruling of the Tax Court, which refrained from issuing a resolution until after the criminal case concludes.

15. (SBU) Princeton Dover and Engelhard await whether their local executives will be included in the criminal case; according to the Princeton Dover representative, the judge is nearing a decision to begin a trial (after nearly 5 years) and determine who of the more than 200 accused will be included.

LeTourneau: Challenges Remain  
-----

16. (SBU) Loret de Mola is working with a local consulting firm, MacroConsult, to calculate the GOP's final compensation offer for LeTourneau. MacroConsult is using the 1968 LeTourneau letter, signed by then Vice President Walter Knowles, which stated that the total value of the road constructed was 38 million soles oro (approximately \$10 million in market prices) as the basis for the compensation rate (ref A). Loret de Mola predicts that the final offer will total approximately \$10 million, including interest.

17. (SBU) LeTourneau continues to argue that the GOP should not/not use the 1968 letter as its basis for compensation. According to LeTourneau, the letter bases its calculation on a 1967 appraisal, which was done before LeTourneau completed

the road and three years before the actual expropriation. The company has sent several emails to Loret de Mola, emphasizing the need for a transparent process and re-suggesting that a panel of independent experts be convened to determine the scope and value of the work performed by LeTourneau in 1968 and how to translate that value into market prices. LeTourneau's attorney informed Econoff on September 12 that the company would not accept any GOP offer that was not fair and transparent.

Comment: One Step Closer

18. (SBU) After discussions with Luz del Sur/PSEG, we are confident that SUNAT will act quickly to resolve this case, perhaps in the next few weeks. The three remaining cases will take more time. Loret de Mola is encouraging the Constitutional Court to expedite both the Engelhard and Princeton Dover cases. Even with expeditious treatment, we do not expect a ruling within the next two months. The LeTourneau case is another thorny problem - we fully expect LeTourneau to refuse the GOP's final offer, claiming that \$10 million does not adequately reflect the value of LeTourneau's work.

STRUBLE